

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DWAYNE THOMAS,	:	
	:	17cv781
Petitioner,	:	12cr174
	:	
-against-	:	<u>ORDER</u>
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
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WILLIAM H. PAULEY III, Senior United States District Judge:

Petitioner Dwayne Thomas, an incarcerated inmate, moves for an extension of time to file a notice of appeal of this Court’s January 19, 2021 Memorandum & Order denying his 28 U.S.C. § 2255 habeas petition. (ECF No. 31.)

Pursuant to Federal Rule of Appellate Procedure 4(a)(1)(B), Thomas was required to file a notice of appeal within sixty days of this Court’s Memorandum & Order. However, Federal Rule of Appellate Procedure 4(a)(5) provides that “[t]he district court may extend the time to file a notice of appeal if: (i) a party so moves no later than 30 days after the time prescribed by [Rule 4(a)(1)] expires; and (ii) . . . [the] party shows excusable neglect or good cause.”

This Court docketed the Memorandum & Order on January 19, 2021 and Thomas moved for an extension on April 6, 2021—17 days after a notice of appeal would be considered timely under Rule 4(a)(1)(A). Thus, Thomas satisfies Rule 4(a)(5)(A)(i). For good cause under Rule 4(a)(5)(ii), Thomas cites that he “was not provided with a copy of [this Court’s] decision” and that he first learned of it on March 24, 2021. (ECF No. 32.) It appears that Thomas’s

counsel retired from the practice of law and therefore Thomas did not receive notice. This Court finds that Thomas's delayed receipt of the January 29, 2021 Memorandum & Order constitutes good cause under Rule 4(a)(5)(A)(ii).

For the foregoing reasons, Thomas's motion for an extension of time to file a notice of appeal is granted. Pursuant to Federal Rule of Appellate Procedure 4(a)(5), Thomas must file any notice of appeal by April 23, 2021. Chambers staff will mail a copy of this Order to Thomas.

Dated: April 9, 2021  
New York, New York

SO ORDERED:



WILLIAM H. PAULEY III  
U.S.D.J.